

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)

Implementation of Pay Telephone)

Reclassification and Compensation)

Provisions of the Telecommunications Act of)

1996)

Petition for Rulemaking or, in the)

Alternative, Petition to Address Referral)

Issues In Pending Rulemaking)

CC Docket No. 96-128

**COMMENTS OF CITIZENS UNITED FOR REHABILITATION OF ERRANTS
IN RESPONSE TO PETITIONERS' ALTERNATIVE RULEMAKING PROPOSAL**

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The national chapter of the Citizens United for Rehabilitation of Errants, on its own behalf and that of its chapters and affiliates (collectively, "CURE"), hereby responds to the public notice released by the Federal Communications Commission ("Commission")¹ in the above-referenced proceeding seeking comment on the alternative rulemaking proposal of Martha Wright and other prison inmate and non-inmate petitioners ("Petitioners") to ensure the reasonableness of inmate calling service rates ("*Alternative Proposal*").² CURE strongly supports the *Alternative Proposal* and the Petitioners' efforts to ensure the reasonableness of inmate calling rates by implementing rate benchmarks and requiring the offering of more affordable debit calling services. The *Alternative Proposal* would lower the excessively high

¹ FCC Public Notice, *Comment Sought on Alternative Rulemaking Proposal Regarding Issues Related to Inmate Calling Services*, CC Docket No. 96-128, DA No. 07-961 (rel. March 2, 2007). The deadline for comments, which was initially April 2, 2007, was extended to May 2, 2007.

² Petitioners' Alternative Rulemaking Proposal, CC Docket No. 96-128 (Feb. 28, 2007) ("*Alternative Proposal*").

rates that friends and family incur when trying to maintain ties with their loved ones who are incarcerated.³

I. INTRODUCTION AND SUMMARY

CURE is a non-profit nationwide organization dedicated to the reduction of crime through the rehabilitation of criminal offenders and the reform of the criminal justice system.⁴ CURE, which is headquartered in Washington, D.C., has a federal chapter and chapters or affiliates in most states and maintains direct contact with inmates and their families and friends.⁵ Through advocacy efforts and research, CURE and others have determined that the rehabilitation process greatly assists in the reintegration of prisoners back into society as law-abiding citizens and thus reduces the rate of recidivism. The importance of rehabilitation continues to intensify as prison populations increase.

To be effective, rehabilitation must include consistent and meaningful contact between an inmate and his or her family and community, which often is limited to telephone calls. Rates for inmate calling services are exceptionally high in large part because inmate telephone service providers often pay commissions (some as high as 65 percent of gross revenues) to prison administrators in exchange for the exclusive right to provide telephone service in the prisons. The burden of paying for inmate calls, however, is placed primarily on those receiving the calls, many of whom are economically disadvantaged. Thus, high inmate calling rates not only hinder

³ Although the Commission has jurisdiction only over interstate telecommunications services, CURE also supports the implementation of similar relief for intrastate inmate calling services.

⁴ CURE's members include current and former inmates, their families and friends, federal, state and local legislators, religious and civic leaders, other non-profit charitable organizations, and other supporters interested in promoting the rehabilitation of inmates.

⁵ CURE's federal chapter focuses on issues concerning the federal prison system while CURE's state and regional chapters focus on prison issues in their respective geographic areas. A letter from CURE's federal chapter in support of the *Alternative Proposal* is attached as Exhibit 1.

important rehabilitative efforts, but also directly harm and punish innocent consumers who simply try to maintain contact with friends and loved ones.

CURE has been involved with the issue of inmate telephone services for many years. In 2000 CURE launched its Eligible Telephone Charges (“eTc”) Campaign to promote the reduction of inmate calling rates.⁶ CURE has consistently urged the Commission, federal and state lawmakers, prison administrators, and telephone companies to lower inmate calling rates. CURE also previously recommended that the Commission adopt the Petitioners’ *2003 Wright Petition*⁷ advocating the prohibition of exclusive service arrangements between private prison administrators and telephone companies to introduce competition into the inmate calling service market and thereby reduce inmate calling rates.⁸

Several positive steps have been taken in the last several years to raise awareness of the need to reduce inmate calling rates. For example, as further explained in the *Alternative Proposal*: (1) many in the judicial and legal community, consumer advocates, and civil leaders agree that inmate calling rates, driven by high commissions, are excessive, unfair, and thwart rehabilitation efforts; (2) federal legislation has been introduced to curb inmate calling rates; and (3) a handful of states have reduced or done away with commissions.⁹ These efforts, however,

⁶ Further information regarding CURE’s eTc Campaign is available at www.etccampaign.com.

⁷ See Martha Wright, et al. Petition for Rulemaking or, in the Alternative, Petition to Address Referral Issues in Pending Rulemaking, CC Docket No. 96-128 (Oct. 31, 2003) (“*2003 Wright Petition*”).

⁸ See Comments of Citizens United for Rehabilitation of Errants in Response to the Wright Petition for Rulemaking, CC Docket No. 96-123 (March 10, 2004).

⁹ See *Alternative Proposal* at 2-4. The National Association of State Utility Consumer Advocates (“NASUCA”) also adopted a resolution in 2006 urging the Commission and Congress to: (1) ensure that inmate calling service rates are just and reasonable; (2) discourage or reduce commissions paid by telephone companies to prison administrators, and (3) encourage the use of inmate debit calling services in addition to collect calling services. See NASUCA Resolution

have not resulted in comprehensive reform of inmate calling services. Thus, rehabilitative efforts continue to be hindered, and many innocent consumers continue to inappropriately bear the high cost of inmate calling services.

CURE continues to support the *2003 Wright Petition* and believes it offers a reasonable, cost-effective technical solution pursuant to which competition in inmate telephone services can exist. CURE, however, also believes that the rate benchmarks set forth in the *Alternative Proposal* are just and reasonable, and would be legally and technologically simpler for the Commission and prison administrators to implement. Accordingly, CURE supports the proposal to: (1) require prisons to offer interstate debit card or debit account calling (together, “debit calling”) services in addition to collect calling services; and (2) cap interstate inmate collect calling services at \$0.25 per minute and interstate inmate debit calling services at \$0.20 per minute, with no set-up or other per-call charge.

II. ONLY COMMISSION ACTION WILL PROVIDE NECESSARY RELIEF FOR INMATE TELEPHONE SERVICES

As the record in this proceeding demonstrates, it has become widely accepted that maintaining family and community relationships is central to rehabilitation of inmates and the reduction of recidivism.¹⁰ The ability for inmates and their family and friends to maintain meaningful connections, however, has become increasingly difficult due to the excessively high rates charged for inmate calling services that are partly the result of the exclusive service commissions paid by inmate service providers.

2006-02, Fair Rates for Calls from Inmates of Correctional Institutions, *available at* <http://www.nasuca.org/Resolutions/Resolution%20-%20Inmates%202006-02.doc>.

¹⁰ See also 2004 Legal Resource Guide to the Federal Bureau of Prisons, U.S. Department of Justice, at 35 (“Telephone privileges are a supplemental means of maintaining community and family ties that contributes to an inmate’s personal development.”), *available at* www.bop.gov/news/PDFs/legal_guide.pdf.

In addition, current policies unfairly harm those who are not in prison. Many prisons offer only collect calling services, and, thus, call recipients are responsible for paying the exorbitant charges for calls placed from prison facilities. Some prison facilities also offer debit calling services, which are typically less costly than collect calling services but also are subject to commission payments. It often is the case, however, that call recipients provide the monies for the debit calling services used by inmates.¹¹ As noted above, many of those who receive inmates' calls are economically disadvantaged. Thus, the burden of paying excessive inmate calling rates often falls to those who are in the worst position to do so.

Moreover, telephone calls are often the only consistent and meaningful connection inmates have with family and community because they are imprisoned in jails located great distances from their loved ones.¹² States are increasingly "exporting" inmates from their home states due to overcrowding.¹³ Because those trying to maintain ties to inmates are often economically disadvantaged, visits are virtually impossible due to travel costs and the need to

¹¹ Some prison facilities allow inmates to work to earn wages, but those wages – sometimes less than \$1 a day, are minimal in comparison to inmate calling rates. *See, e.g.*, Michael Virtanen, "Prison Crews Find Work in the Wilderness," Associated Press State & Local Wire, February 9, 2007, attached as Exhibit 2 ("Inmates earn from 85 cents to \$2.10 a day, depending on education, skills and pay bumps."); Dan Murtaugh, "Jockisch to Get Out of Prison," Mobile Register (Alabama), at B1 (April 13, 2007), attached as Exhibit 3 ("Inmates earn between 12 and 40 cents an hour.").

¹² In CURE's experience, letters are not as effective as visits and telephone calls because of the time delays inherent in corresponding by mail and the high illiteracy rates in prisons. *See also* Testimony of Mason Bishop, Deputy Assistant Secretary of the U.S. Department of Labor, before the Senate Subcommittee on Corrections and Rehabilitation (Sept. 21, 2006) (noting that 19 percent of prisoners are completely illiterate and 40 percent of prisoners are functionally illiterate), available at http://judiciary.senate.gov/testimony.cfm?id=2072&wit_id=5760.

¹³ *See, e.g.*, Phil Davidson, "Inmates Go Out of State – Idaho Plans to Send 700 Prisoners to Other Parts of the Country by 2010," Idaho Falls Post Register (Idaho), at A1 (March 25, 2007), attached as Exhibit 4; Arthur Santana, *Locked Down and Far From Home*, Wash. Post, Apr. 24, 2003, at B1, attached as Exhibit 5.

take time off from work. As a result, it is typical for inmates that are imprisoned far from family and friends to rarely, if ever, see spouses, parents, children, other family members and friends.

Children in particular “suffer a silent sentence” when their parents are in prison.¹⁴

According to prison officials, more than one million children nationwide (average age of eight) have parents in prison, more than half of whom have never had an in-person visit and who are incarcerated more than 100 miles away from their families.¹⁵

Life is hard for inmates’ children.... Losing a parent to prison often leaves them poorer. They may feel ashamed and alienated from friends. They tend to bounce from one caregiver to the next. And they’re at much higher risk, studies suggest, of ending up behind bars themselves.¹⁶

Excessively high inmate calling rates only further sever parental connections, to the detriment of the children as well as those who are incarcerated.

Acknowledging that the commissions on inmate calling services are unreasonable and harmful, a limited number of states have taken steps to reduce or eliminate them. Although CURE applauds these endeavors, more comprehensive action by the Commission is necessary. Rates for inmate calling services remain astronomical in many cases. For example, the rate for a collect call from the Central Mississippi Correctional Facility in Rankin County, Mississippi (served by Global Tel-Link) to Louisiana includes a \$3.45 connection fee and a \$0.79 per minute charge – thus costing \$4.24 for a one minute call, \$12.14 for an 11 minute call, and \$19.25 for 20

¹⁴ Richard Roesler, “Family Contact Key to Inmates; Proposal Orders Agencies to Help Strengthen Bonds,” *Spokesman Review* (Spokane, WA), at B1 (February 2, 2007), attached as Exhibit 6.

¹⁵ *See id.*

¹⁶ *Id.*

minute call.¹⁷ Similarly, the rate for a collect call from various prison facilities in California (served by MCI) to Oregon includes a \$4.28 connection fee and a \$0.98 per minute charge – thus costing \$8.24 for a four minute call, \$12.14 for an eight minute call, and \$18.98 for a 15 minute call.¹⁸

Even in those states that have reduced the commissions they receive from telephone companies that serve state correctional facilities, commissions remain high and continue to result in unreasonably high inmate calling rates. For example, Alabama recently lowered its 51 percent commission to 45 percent.¹⁹ Maine also intends this year to lower its commission from 41 percent to 33 percent, and Arkansas intends to reduce its commission from 55 percent to 45 percent.²⁰ One local prison administrator recently boasted about upwardly negotiating a commission from 35 percent to 58 percent to increase the amount of revenues netted by the county.²¹ Only action by the Commission will curb these continuing excessive inmate calling rates.

III. CAPPING RATES FOR INMATE CALLING SERVICES WOULD SERVE THE PUBLIC INTEREST

The Commission has long recognized that the prison environment lacks competitive telecommunications services, rates for inmate calling services are dramatically higher than

¹⁷ See Global Tel-Link customer bills from August 2006 through February 2007, attached as Exhibit 7.

¹⁸ See MCI customer bills from December 2006 through February 2007, attached as Exhibit 8.

¹⁹ See Charlie Frago, “Rates Dropping By June, Prison Phone Callers Told,” Arkansas Democrat-Gazette (Little Rock), March 18, 2007, attached as Exhibit 9.

²⁰ See Bill Nemitz, “Prisons’ Fees Take Toll on Poor Families,” Portland Press Herald (Maine), at B1, June 31, 2007, attached as Exhibit 10 (“Portland Press”); Jim Brooks, *Jail Calls to Net Pulaski County Additional Cash, Contract Increases Take to 58 Percent*,” Arkansas Democrat-Gazette (Little Rock), January 20, 2007, attached as Exhibit 11.

²¹ See *id.*

services available to the general public, and site commissions paid by service providers are the leading cause for such exorbitant rates.²² Further, it is well established that such commissions constitute profit and that rates that generate such inflated profits are presumptively unreasonable.²³ As demonstrated time and again in this proceeding, and as acknowledged by the courts, legal community and civic leaders, high inmate calling rates tear at the very fabric of an inmate's social and familial support system, increase the risk of recidivism, and needlessly punish those consumers – who have committed no crime – who receive calls from inmates.

Those opposing Commission action in this case offer no sound, legal basis for doing so and their comments, in fact, often demonstrate why the Commission should impose benchmarks on inmate calling rates.²⁴ Opponents fail to acknowledge that the Commission has explicit statutory authority to regulate interstate inmate calling services to protect consumers from unreasonable rates, which states cannot nullify. Further, to the extent they believe it is necessary, states may use other proper appropriations methods to collect monies that currently are recovered through inmate calling commissions. As one department of corrections

²² See *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Order on Remand and Notice of Proposed Rulemaking, 17 FCC Rcd 3248, 3253 (2002) (“*Inmate Order and NPRM*”); see also *Billed Party Preference for InterLATA 0+ Calls*, Second Report and Order and Order on Reconsideration, 13 FCC Rcd 6122, 6156 (1998), *modified* 16 FCC Rcd 22314 (2001).

²³ See *Inmate Order and NPRM*, 17 FCC Rcd at 3255, 3259-60; *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Third Report and Order and Order on Reconsideration of the Second Report and Order, 14 FCC Rcd 2545, 2562 (1999); *AT&T Corp. v. Business Telecom, Inc.*, 16 FCC Rcd 12312, 12332 (2001).

²⁴ See, e.g., Letter from John D. Rees, Commissioner, Kentucky Department of Corrections, CC Docket No. 96-128, at 2 (March 22, 2007) (arguing that commissions are “financial penalties” assessed on inmates and that the cost of inmate calling services is appropriately placed on inmates or on the only segment of society that have an interest in the case of inmates (*i.e.*, families and friends)); Comments of John Shaffer, CC Docket No. 96-128, at 1 (March 16, 2007) (arguing inmate calling rates should not be regulated because it may prevent states from using revenues derived from commissions for non-prison related activities).

spokesperson noted, “I’m not saying I can justify or rationalize [these commissions] – other than it’s been the practice for decades.”²⁵ Comments also show that although limited relief from high inmate calling rates has been or is being implemented in some areas, Commission action is necessary to ensure that all consumers are protected from unreasonable inmate calling rates.

CURE agrees with the Petitioners that applying benchmarks to inmate calling rates would be administratively feasible and effective. This proceeding, most recently in the *Alternative Proposal*, is replete with evidence that existing rates for inmate calling services are unreasonable by any measure. The proposed benchmarks – \$0.20 per minute for debit calls and \$0.25 per minute for collect calls, with no per-call connection charge – are based upon significant analysis and real-world conditions.²⁶ Thus, these benchmarks are appropriate and would assure that those paying for inmate calling services do so at just and reasonable rates.

IV. OFFERING DEBIT CALLING SERVICES SERVES THE PUBLIC INTEREST

CURE strongly supports the Petitioners’ request that the Commission require inmate service providers to offer debit calling services. Such services are typically less expensive than collect calls, and requiring a debit calling option may exert downward pressure on collect calling rates. CURE previously noted in this proceeding that debit calling services have been implemented successfully in the federal penal system and some state prison systems while satisfying all security measures that prison administrators must employ. The record also amply shows that debit calling services can substantially reduce inmate calling rates by eliminating costs for operator services, billing and collection, and bad debt.

Moreover, CURE continues to receive complaints that inmates’ collect calls often are terminated prior to the time allotted by prison administrators, thus requiring the caller to make

²⁵ Portland Press, supra n.20, at B1.

²⁶ See *Alternative Proposal* at 16-23.

another collect call that will result in the called party incurring another exorbitant set-up or other per-call charge. In CURE's experience, however, such early termination errors do not occur as frequently with debit calling services, which typically do not have per-call charges, possibly because there would be no profit in terminating debit calls early. Thus, accessibility to debit calling services arguably would help alleviate early call termination and the additional per-call fees incurred by called parties.

An increasingly problematic issue regarding call blocking further supports mandating debit calling services. Specifically, collect calls from penal facilities will be blocked if the call recipient's telephone company does not have an established billing arrangement with the telephone company serving the prison. For example:

1. An inmate (John Doe) makes a call to Mary Doe from a payphone provided by Carrier A.
2. Marcy Doe uses Carrier B as her local telephone provider.
3. Carrier A will block collect calls from John Doe to Mary Doe if it has no billing agreement with Carrier B.

In the example above, Mary could receive collect calls from John if she deposited money (often a \$50 minimum) into an account with Carrier A. Mary, however, may never receive an accounting of how the deposit is spent or receive notice when the deposit is exhausted until another block is placed on her telephone. Alternatively, if Carrier A also is a local telephone company, Mary could change her primary telephone company to Carrier A. This, however, effectively forces Mary to change providers and lock herself into using one telephone company, negating any potential benefits of competition and eliminating her ability to choose among service providers. CURE has received reports from users of inmate calling services that MCI, Sprint, T-Netix and Global Tel-Link have blocked collect calls in the manner described above.

Debit calling services would solve call blocking because inmate calling service providers would be assured payment for an inmate's call.

The *2003 Wright Petition* and *Alternative Proposal* show that debit calling services can be implemented without sacrificing security or penological interests with little or no additional cost to the prison administrators.²⁷ Further, debit calling services can result in lower inmate calling rates and help promote communications between inmates and their families and communities. Thus, requiring inmate calling service providers to offer debit calling services serves the public interest.

V. CONCLUSION

For the reasons set forth herein, the Commission should impose the proposed benchmarks on inmate calling services and require inmate service providers to offer debit calling services. Such steps will help ensure that consumers – including those that have committed no crime – have access to just and reasonable telephone rates and will maximize the opportunities for communications between inmates and their families and friends.

Respectfully submitted,

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²⁷ See *id.* at 23-26.